RSA 25/1999
BEFORE
THE HON'BLE MR. JUSTICE H.N.SARMA

This Second Appeal arises out of a decree of reversal passed by the learned District Judge, Nagaon in Title Appeal No.1/98 reversing the judgment and decree passed by the learned Civil Judge (Sr. Division), Nagaon in Title Suit No. 64/91.

Heard Mr B Banerjee, learned counsel for the appellant and Mr DC Mahanta, learned senior counsel for the respondents.

Mr Banerjee, learned counsel for the appellant raises the following substantial questions of law for decision in this appeal :-

1) Whether the learned appellate Court was justified in reversing the judgment and decree passed by the learned Trial Court without disposing of the cross-objection filed by the appellant?
2) Whether the proved facts justify reversal of the judgment and decree passed by the learned Trial Court ?

The pleaded facts in broad perspective are not disputed. It is also not disputed that the suit property originally belonged to Derhin Teli through whom both the parties claimed the property. However, the defendant- appellant claimed that he is the only heir to inherit the property left by Dehrin and the plaintiffs are not the heirs entitled to the suit property.

The learned Trial Court dismissed the suit on the ground that the plaintiffs failed to prove their case as pleaded in the plaint. Learned appellate Court, however, reversed the decree to the extent that the plaintiffs are joint owners of the suit property along with the other co-plaintiffs and the principal defendant. However, the learned appellate Court dismissed the appeal by mentioning at para 9 that the defendant-appellant has filed a cross objection under Order 41 Rule 22 challenging the findings on issue No. 2 and 3. There is no whisper in the judgment regarding the said cross-objection or regarding its legality or otherwise. The said cross-objection ought to have been disposed of along with the appeal wherein substantial claim of right has been alleged by the defendant-appellant.

Mr. Mahanta in his usual fairness, which is also born out of records, has not disputed the aforesaid fact. In that view of the matter, the case is remanded back to the learned appellate Court for decision of the aforesaid cross-objection filed by the appellant. Since the aforesaid cross-objection has a vital bearing on the merit of the case, I find it extremely difficult to sustain the impugned judgment which was passed without deciding the cross-objection.

Consequently, the impugned judgment and decree passed by the appellate Court is set aside and the matter is remanded back for re-decision. The learned appellate Court shall decide the appeal along with the cross-objection filed by the defendant and both the appeal as well as the cross-objection shall be disposed of simultaneously.

Registry is directed to transmit the LCRs to the learned Court below forthwith. Both the parties shall appear before the appellate Court on 8.3.2007 to receive further instructions from the Court below.